President of United States

President of United States

OBSERVATIONS

ON

Mr. GALLATIN's SPEECH,

ON THE

FOREIGN INTERCOURSE BILL.

PRICE TWENTY-FIVE CENTS.

OBSERVATIONS

ON THE

SPEECH

OF

ALBERT GALLATIN,

IN THE

HOUSE OF REPRESENTATIVES OF THE
UNITED STATES,

ON THE

Foreign Intercourſe Bill.

By ALEXANDER ADDISON,

WASHINGTON:
PRINTED BY JOHN COLERICK.

1798.

OBSERVATIONS

ON

Mr. GALLATIN's SPEECH, &c.

WHEN a Speech of a Repreſentative is publiſhed in a pamphlet, and tranſmitted by its author through the country, it becomes a fair ſubject for a free candid examination. It is addreſſed, not to the houſe, but to the people; to convince, not his fellow members, but his fellow citizens: and invites a diſcuſſion, not within but without doors. In my opinion, no ſubject better deſerves diſcuſſion, than that which this Speech embraces. It ſupports a principle, which, as I view it, muſt be deſtroyed, or it will deſtroy the government: for, if my judgment be right, both cannot ſurvive. Yet the opinion which I am about to ſupport, is, by the author of the Speech, even while he profeſſes to diſclaim political infallibility, bluntly declared to be palpably abſurd, and as novel as it is abſurd. Many things in the Speech will ſatisfy us, that the victory of the Conſtitution over the Houſe of Repreſentatives, on the ſubject of the appropriations for the Britiſh Treaty, is affected to be conſidered by this

ſpeaker, as but half won; and this Speech, on a more popular ſubject, is ſpread over the country, to prepare the minds of the people for a more popular, and perhaps more ſucceſsful oppoſition to Conſtitutional principles, on a future occaſion. The paſt diſappointment, the time for reflection, the character of the ſpeaker, and the humility with which his colleagues in oppoſition compliment him with the palm, as the *coryphæus* of the party; induce a belief, that his doctrine is now diſplayed in all its force, and to the utmoſt expectable advantage. If the oppoſite doctrine can be made to appear neither abſurd nor novel, it will be gaining a point; and if, on inveſtigation, it ſhall appear to be rational and conſtitutional, it will be gaining a *great* point, for the ſecurity of the Government, and the happineſs of the people of the United Sates.

As the incidental topics of the Speech are leſs or not eſſential, I ſhall confine my obſervations to the conſtitutional principle involved in the debate which occaſioned the Speech.

The Conſtitution, which veſted the executive power in the Preſident of the United States, declared that he ſhall nominate, and, by and with the advice and conſent of the Senate, ſhall appoint, ambaſſadors, other public miniſters, and conſuls.

In July, 1790, Congreſs paſſed a law, authoriſing the Preſident to draw from the treaſury a ſum not exceeding forty thouſand dollars annually, for the ſupport of ſuch perſons as he ſhall commiſſion, to ſerve the United States in foreign parts; and providing, "that the Preſident ſhall not allow to any miniſter plenipotentiary a greater ſum, than at the rate of nine thouſand dollars *per annum*, as a compenſation for all his perſonal ſervices and other expences; nor a greater ſum for the ſame, than four thouſand

ſand five hundred dollars *per annum* to a *chargè des affaires.*" This law, as is often done when power is wiſhed to be retained, Congreſs limited to a duration of two years and the end of the ſubſequent ſeſſion*. In February, 1793, it was continued for other two years†; and in May, 1796, it was continued for one year; ſtill with the addition of the ſubſequent ſeſſion of Congreſs‡.

Of the different grades of public miniſters known to the law of nations, theſe laws provided for the compenſation of two; the grade of miniſter plenipotentiary, and that of *chargè des affaires.* Before May, 1796, the higher of theſe grades, a miniſter plenipotentiary, had been appointed only to Britain, to France, and to Spain; to any other court a miniſter of the inferior grade had been appointed. In May, 1796, the Preſident thought proper to appoint a miniſter plenipotentiary to Liſbon; and, in 1797, to appoint a miniſter plenipotentiary to Berlin: and correſpondent appropriations were provided by Congreſs, in May, 1796, and July, 1797, for thoſe years§.

The limitation of the former laws rendered it neceſſary to bring the ſubject of foreign intercourſe again before Congreſs, in the preſent ſeſſion, and continue the law of 1790. In diſcuſſing this clauſe of the law, "That the Preſident ſhall not allow to a miniſter *plenipotentiary* a greater ſum than at the rate of nine thouſand dollars *per annum*, as a compenſation for all his perſonal ſervices and other expences; nor a greater ſum for the ſame than four thouſand five hundred dollars *per annum* to a *chargè des affaires.*" Mr. Nicholas, an oppoſition member, propoſed to depart from the manner of expreſſion uſed in the law

* 1 *United States Laws*, 175. † 2 *U. S. L.* 151. ‡ 4 *U. S. Law* 115. § 4 *U. S. L.* 116.—5 *U. S. L.* 41.

diveſt the Preſident of any of his conſtitutional power.—Still" ſays he, "it is not my intention to lay any ſtreſs on this argument; a diſcrimination may be drawn between the offices, and a different conſtruction has prevailed;—and it is not neceſſary to prove the conſtitutionality of our doctrine."

Nothing contributes more to error in reaſoning, than ambiguity of words, and the uſe of words, now in one ſenſe, now in another, or applying different words to the ſame thing. By this uſe of language, any falſehood may be made to appear like truth. I am miſtaken if the ſpeech be not throughout a remarkable inſtance of this. It is ſtated in the above reaſoning, that the office of a miniſter, or that of a judge of the ſupreme court, is not created by the Conſtitution; that the office of a miniſter, to any foreign court, where we have not had any before, is created by the Preſident making the appointment; and that the office of a judge of the ſupreme court, is created by Congreſs.

Why, but to bewilder the judgement, the words, "where we have not had any before," were added, unleſs it be meant to confound office with officer, I do not ſee. The appointment of a miniſter to a court, where we have not had any before, will, by this reaſoning, be creating an office; but, if it were to a court, where there ever was a miniſter before, it would not be creating an office; that is multiplying officers is creating offices. On the ſame principle, increaſing the number of judges of the ſupreme court, is making new offices; it would look too abſurd to ſay it was making a new judiciary, or a new ſupreme court; yet, the office and the authority is the ſame thing, and officer and the perſon who executes the authority is the ſame thing, but the perſon and the authority is not the

ſame

same thing. The office exists, when there is no officer, as in the interval between the death, resignation, or dismission of a sole officer, and the appointment of a successor: the office is then said to be vacant, not to cease. The powers of a sole officer may be exercised only occasionally, as the office of lord high-constable, or lord high-steward of England, or a dictator in Rome; in the intervals between their exercise, the office is not abolished, but suspended; and the next appointment is not the creation of an office, but of an officer. The same may be the case with offices, whose powers are exercised not by one, but by several; and adding to the number is not multiplying offices, but officers. This is the case of the office of foreign intercourse, of agency, or commission to serve the United States in foreign parts*. The foreign intercourse, the President's agency or commission in foreign parts, is the office; the ministers are the officers; and the appointment of one or more, as occasion requires, is not the creation of an office, but of officers. The constitution of Pennsylvania authorises the Governor, to appoint a competent number of justices of the peace, in each district; if, where there is but one, he should add another, is this creating a new office, or only a new officer?

Before the Constitution or any law of the United States existed, there were ministers, and there were judges.—— There are many offices, as judges, sheriffs, coroners, justices of the peace, and constables, whose authority is not specially defined, only by a written Constitution or Law, but also by customs and established opinions. When it is intended by a Constitution or a Law, to adopt any of these offices, the Constitution or Law does not go back to all the previous

* *U. S. L.* 175.

previous eſtabliſhed definitions or limitations of authority, but conceiving them to exiſt, unleſs reſtrained, modifies them to the ſituation of the country or the principles of the government. In all nations, there is a legiſlative authority, a judicial authority, an executive authority, and an authority of foreign intercourſe. Theſe offices reſulting from their internal and relative circumſtances, are created in each, whenever the nation takes its ſovereign rank; and are exerciſed according to the ſeveral modifications of their government. While theſe ſtates were in a ſubordinate condition, they had no office or authority of foreign intercourſe, they had no right to foreign intercourſe, for they were not ſovereign ſtates. The Declaration of Independence, by ſeparating the United States from Britain, and eſtabliſhing them as a nation, created in the United States the office of foreign intercourſe. The Confederation declared Congreſs the organ of this foreign intercourſe. The Conſtitution changed this modification, and declared the Preſident the organ of the United States in their foreign intercourſe; and, from this declaration of the Conſtitution, the management of foreign intercourſe became a part of the Preſident's conſtitutional authority. From the exerciſe of this authority and all agency in it, Congreſs was excluded; and miniſters to foreign nations were no longer the agents of Congreſs, but of the Preſident.

The Conſtitution was a new modification of the government of the Union; and a federal judiciary, acting upon individuals, was a new power introduced into it. Whatever was given to it, was taken from the ſtate judiciary. It therefore became neceſſary "to fix its juriſdiction," to define what part of the ſtate judiciary was taken, and veſted in the federal judiciary. The Conſtitution only eſtabliſhed

bliſhed a ſupreme court,—and a power in Congreſs to eſtabliſh inferior courts, and limited the extent of federal judiciary, which Congreſs could take from the ſupreme court, and veſt in the inferior courts. This laſt was neceſſary, leſt Congreſs, in the organization of inferior courts, ſhould affect that part of juriſdiction, which is attached to the Preſident, foreign intercourſe. The conſtitution therefore excludes the inferior courts to be eſtabliſhed by Congreſs from all juriſdiction "affecting ambaſſadors, other public miniſters, and conſuls*." The firſt limitation was neceſſary, to prevent any federal court from incroaching on the ſtate judiciary.

But none of theſe reaſons, and no reaſon exiſted, to induce the framers of the conſtitution, to define the limits of foreign intercourſe. It was not a new principle, in the government of the union, for it exiſted under the confederation. It could not incroach on any ſtate juriſdiction, for no ſtate ever had it. It reſulted from the nature of the caſe, and exiſted immediately after the declaration of Independence made the thirteen ſtates, as to all others, one nation.

I will go farther and ſay, that the framers of the Conſtitution could not define or limit it. For it reſted on principles over which the United States had no control; but in concurrence with other nations. The Conſtitution could dictate the relations of one ſtate to another, but it could not dictate the relations of the United States with other nations. Thoſe relations are defined by a power paramount, the law of nations—the conſtitution of the civilized world. This law of nations is to the Conſtitution of any nation, as the Conſtitution of the United States, to

*Art. iii. Sect. 2.

the Conſtitution of any ſtate of America. This law, therefore, cannot be altered by the act of any one nation, without the concurrence of the others. The Conſtitution, therefore, is not ſo abſurd as to meddle with fixing its juriſdiction, and contents itſelf with eſtabliſhing its organ. Inſtead of the Congreſs of the Confederation, the Conſtitution eſtabliſhes the Preſident, reſtrained only by the Senate, as its organ of foreign intercourſe, and to him, ſo reſtrained, leaves all the authority on this ſubject, which the Congreſs of the Confederation had, or the law of nations gives to the organ of foreign intercourſe in any other nation. Part of this the law of nations eſtabliſhes to be, a power to ſend miniſters of different grades according to the importance of the ſubject or the parties. The compenſation to theſe grades muſt be determined, by what is neceſſary to ſupport the views of the law of nations. And if any other branch of the federal government, in which the power of compenſation is veſted, in whole or in part, ſo far exerciſe this power, as to defeat the lawful diſcretion of the organ of foreign intercourſe, that branch uſurps a power not given it by the Conſtitution, exerciſes the power, or, which is the ſame thing, reſtrains the exerciſe of the power, of the organ of foreign intercourſe, and violates not only the Conſtitution of the United States, but the Conſtitution of the great Confederation of the civilized world.

How far a law was neceſſary, to eſtabliſh a Supreme Court, may not be neceſſary in the preſent diſcuſſion. I have ſtated that, though the office of a judiciary had exiſted in all ſtates, a judiciary in the federal government over individuals was (let me adopt the word) "created", by the Conſtitution. That a law was neceſſary to *create* a Supreme

Supreme court, cannot be inferred from the words of the Conſtitution, that the Preſident ſhall appoint "Judges of the Supreme court, and all other officers of the United States, whoſe appointments are not herein otherwiſe provided for, and *which ſhall be eſtabliſhed by law**;" for theſe words expreſsly refer to other officers, than judges of the ſupreme court; nor from the words "The judicial power of the United States ſhall be veſted in one ſupreme court, and in ſuch inferior courts as the *Congreſs may from time to time ordain and eſtabliſh*†;" for theſe words expreſsly refer to other courts, than the ſupreme court.

That where the Conſtitution does not, as in the caſe of the Preſident and the two Houſes of Congreſs, minutely deſcribe the organization, a law is neceſſary to organize, is an idea more favoured by many than by me. Suppoſe now, (ſince much of the oppoſition argument reſts on the ſuppoſition of the Preſident acting extravagantly and abſurdly) that Congreſs had acted ſo extravagantly and abſurdly, as not to have organized a ſupreme court; and ſuppoſe that I were to contend for more than was contended for in the debate on the foreign intercourſe bill; and to aſſert that the Preſident could, without a law, have appointed ſuch a number of judges of the ſupreme court, as in his diſcretion were competent for the duties preſcribed by the Conſtitution; I wiſh to know by what arguments from the Conſtitution my aſſertion could be oppoſed. I ſhould have on my ſide, the conſtitutional authority, as ſtated in the Speech, "that there *ſhall* be a ſupreme court" with a juriſdiction fixed by the Conſtitution; and the conſtitutional authority of the Preſident to "appoint judges of the ſupreme court." I might be anſwered, that Con-

* *U. S. Conſt. Art.* 2, *ſect.* 2. † *Art.* 3, *ſect.* 1.

greſs would furniſh no ſalary. I would reply that Congreſs will not aſſiſt, but they will defeat a conſtitutional authority.

That when Congreſs organized the court, and fixed the number of judges, the Preſident in the exerciſe of his conſtitutional authority of appointment, ſhould not exceed that number, is conſtitutional and proper, for their number is properly a matter of internal legiſlation.

But "not to lay any ſtreſs on this argument;" for really the queſtion is not, how the office of foreign intercourſe was created, but to whoſe management the Conſtitution has committed it; I will ſtate what I conceive to be the true limits of the conſtitutional authority.—To Congreſs the Conſtitution has committed the management of internal relations; to the Preſident, checked only by the Senate, the management of external relations. The Preſident, ſo checked, is the conſtitutional organ of all intercourſe between this and foreign nations. Congreſs, checked only by the qualified negative of the Preſident, is the organ of all federal authority operating only on ourſelves.

On the ſubject of foreign intercourſe, the Preſident, checked only by the Senate, has *all* legiſlative powers, and Congreſs has only executive authority. Congreſs has power in its deſcretion to make ſuch laws, eſtabliſh ſuch offices, and appropriate ſuch ſalaries for their ſupport, as our internal circumſtances require; and the Preſident is poſitively *bound* to execute them, and appoint ſuitable officers. The Preſident has power in his diſcretion to make ſuch treaties, and appoint miniſters of ſuch grades, as our circumſtances relative to foreign nations require; and Congreſs is poſitively *bound* to make ſuitable proviſions and appropriations for ſalaries, &c. If either the Preſident or Congreſs fail in the execution of the authority thus given by the

the Conſtitution to each, their is a failure in duty, and the Conſtitution is violated:—And the Preſident would not act more unconſtitutionally and abſurdly, in refuſing to appoint officers, or in appointing incompetent officers; than Congreſs, in refuſing to appropriate ſalaries, or in appropriating incompetent ſalaries.

Why ſhould not the Conſtitution ſo diſtribute the legiſlative authority, according to the ſubjects on which it is to operate? Is not the Conſtitution the expreſſion of the will of the people? Is not the Preſident the repreſentative of the people. And if *ſafety* require, that the power of making *laws* over only ourſelves ſhould be given to *many*; may not *wiſdom* require, that the power of making *contracts*, the management of all agency with other nations, be given to *one?* What chance is there, that the beſt knowledge of our true intereſts ſhould be found in a majority of the Houſe of Repreſentatives, rather than in the Preſident? What nation would treat with us, if the Houſe of Repreſentatives were part of the organ of foreign intercourſe? The Houſe of Repreſentatives, with all its popular paſſions, would ſpend more time and money in diſcuſſing any foreign tranſaction, and with a reſult leſs wiſe, than the Preſident with all his agents, in conducting and concluding it. I know not what others may think, and my opinion may be wrong, but I think, that communications of our proceedings, in our foreign intercourſe, have been too freely made, and have opened diſcuſſions and excited paſſions, which have little favoured our peace and proſperity.

I know, and could anſwer, what may be ſaid of other nations. No nation is like ours: and I reſt on conſtitutional principles. The Conſtitution is the ſtandard by which this queſtion muſt be tried, and to it, therefore, muſt we appeal.

I ſay,

I say, therefore, that the Constitution has vested in the President, checked only by the Senate, the sole management of foreign intercourse*; and, I support this opinion by the words of the Constitution. "The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls; he shall receive ambassadors and other public ministers. All treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land†." The Constitution having established an organ of foreign intercourse, and declared the efficacy of its acts, it was not necessary nor proper, that it should go farther; the law of nations, a Constitution paramount, would regulate the rest.

I say, also, that it is a general rule, that wherever, in the constitutional exercise of this authority, of managing the intercourse of the United States with foreign nations, there is a necessity for the President to call on Congress for money, they are bound to grant such a sum, as is adequate to the purposes, which he, in such exercise of his authority, thinks proper to adopt and execute. And I further say, that it is a general rule, that no department of the government can execute or defeat the constitutional acts of another; and that, when any department has constitutionally concluded an act, and the exercise of the

* *Let me, to avoid frequent repetitions, once for all observe, that when I say this authority is vested in the President, I always mean the President checked, as the Constitution directs, by the Senate.*

† *Art.* 2. *Sect.* 2, 3.—*Art.* 6.

authority

authority of any other department is neceſſary for its execution, every other department is bound to exert its lawful authority, ſo far as is neceſſary for a competent execution of the act; and has no diſcretion to refuſe ſuch exertion of its authority. I ſupport this opinion on the principles of the Conſtitution.

The ſovereignty of the United States is not veſted in one man, or in one body of men; to be exerciſed by that man or that body, or by the agents appointed and removeable by either. The whole ſovereignty is broken into portions or ſhares, and each portion or ſhare is veſted in a certain department; that each department exerciſing the whole of its own ſhare of the ſovereignty, and no department exerciſing any of the ſhare of any other, the ſeveral departments may mutually check each other, and no department may engroſs the whole ſovereignty.—Thus we have a legiſlative department, a judicial department, an executive department. There is no ſuperiority or control in any of thoſe departments or ſhares of ſovereignty, over the other; though one may appoint, and another pay, a third; all are equal and uncontrolled within the limits of their power. The executive may pardon or remit a ſentence of the judiciary, for that is within its ſhare of ſovereignty; but it has no power to reſtrain the judges from paſſing a ſimilar ſentence, when they next paſs ſentence on a ſimilar offence. The legiſlature may alter a law, for that is within its ſhare of ſovereignty, but it has no power without altering the law, to direct the judges to alter their conſtruction of it. When the legiſlature has enacted a law, it cannot alſo conſtrue it, or judge of any man's conduct or rights by it; but muſt leave that authority to the judiciary. When the judges have conſtrued a law, or judged of any man's conduct

duct or rights by it, they cannot execute their judgement; but leave that authority to the executive. The executive cannot exercise any of the powers given to the legislature or to the judiciary; the judiciary cannot exercise any of the powers given to the executive or to the legislature; and the legislature cannot exercise any of the powers given to the executive or to the judiciary; except in so far as the Constitution may trust either with a portion of anothers power, and then it becomes in that respect a part of that other. Thus the departments mutually check each other, and (while none can encroach on the authority of another) mutually restrain each other from engrossing the whole of the sovereignty, and exercising arbitrary power. And all the departments are checked by the Constitution, and by the removing power of the elective branch. If the legislature or the executive exceed their several jurisdiction, the judiciary will declare the act void. If the judiciary exceed its jurisdiction, the executive may refuse its execution. Besides these checks of each department over the others, each department has checks within itself, over the exercise of its own power, to prevent its acts from being rashly conclusive. Thus the Constitution of the United States gives the legislative power to a Congress, composed of a Senate and House of Representatives, and directs, that no bill or resolution shall be considered as an act of the legislature, unless it have obtained the assent of both Houses, and also of the President; or, if he refuse his assent, it must again pass through both Houses with the assent of two-thirds of each. Until it be passed in this solemn manner, it is not an act of the department.

The judicial power is vested in a supreme court, established by the Constitution, and circuit and district courts established by law. The judiciary department has its checks

checks in courts and juries; courts determining law, juries determining facts. Courts cannot determine law, till juries have determined facts; and the verdict of a jury is of no avail, without the judgment of the court. Thus courts and juries mutually check each other, and the ſuperior courts check the inferior. The judgment of any court, acquieſced in, is an act of the department; if carried to a ſuperior court it becomes not an act of the department, till the judgment of the ſupreme court is given, or till a judgment of an inferior court is acquieſced in.

The executive power is veſted in the Preſident, and in moſt caſes, in the Preſident and the Senate. In thoſe caſes in which the concurrence of the Senate is neceſſary, the act of the Preſident only is not an act of the department, till it acquires the ſanction of the Senate. The concurring ſanction of both makes an act of the department.

To this department is intruſted the management of foreign intercourſe; but, as it is variouſly modified, I ſhall take the liberty to make a ſubdiviſion of this department, under the name of *the department of foreign intercourſe.*— The management of this department of foreign intercourſe is intruſted to the Preſident. All who are employed in it, on the part of the United States, are his agents. He generally, but without any law to direct him, uſes the agency of the Secretary of ſtate, in his correſpondence with foreign miniſters here, or our miniſters abroad: and all our miniſters abroad are his agents. He may receive ambaſſadors and other public miniſters from foreign ſtates. But he cannot appoint any ambaſſador, other public miniſter, or conſul, of the United States, without the advice and conſent of the Senate. And he cannot, even by and with the advice and conſent of the Senate, make a treaty, unleſs

two-thirds of the Senators preſent concur*. Theſe are the conſtitutional checks within itſelf, on the department of foreign intercourſe. The Preſident may, by his own act, receive a miniſter from a foreign court, but he cannot appoint a miniſter to a foreign court, without the conſent of the Senate; nor make a treaty, though he have the conſent of a majority, without the conſent of two-thirds of the Senators preſent. In determining therefore, what is an act of the department of foreign intercourſe, we muſt conſider what is the ſubject of the act. If it be the receiving of an ambaſſador, it is an act of the department, on the reception by the Preſident. If it be the appointing of an ambaſſador, other public miniſter, or conſul, it is an act of the department, on the appointment of the Preſident, by and with the advice and conſent of the Senate. If it be the making of a treaty, it is an act of the department, on the ratification by the Preſident, with the advice and conſent of the Senate, provided two-thirds of the Senators preſent concur.

Such then are the checks provided by our Conſtitution; a power of ſome other department to prevent any act of any department from exceeding its conſtitutional juriſdiction; and a power within every department to prevent any of it acts from being raſhly concluſive on any other department. Thus the whole ſovereignty is exerciſed by all; but the whole ſovereignty is not exerciſed by any; and ſo an arbitrary power is effectually prevented: provided the Conſtitution be equally reſpected by all, or the removing power of the elective department be faithfully exerted. The authority intruſted by the Conſtitution, to one department, muſt not be influenced, directed, con-

* *U. S. Conſt. Art.* 2, *Sect.* 2, 3.

trolled,

controlled, or defeated by any other; or there will be an uſurpation of power; and the conſtitutional authority will not be exerciſed by the department, to which the Conſtitution intruſts it, but by it and ſome other, or by ſome other only, or by it under the control of ſome other.

The check provided by our Conſtitution is not a power of any one department, to exerciſe any of the powers of another, or to reſtrain another in the execution of its powers, or to defeat their execution. One branch of a department may prevent the concluding of its own act; but one department cannot prevent or defeat the act of another. No department can either interrupt the proceedings of another to a conſtitutional act of this other department, nor, after this other department has concluded its act, defeat its execution, by refuſing the exertion of conſtitutional power neceſſary for its execution.

What was the intention of the Conſtitution in diſtributing the ſovereignty into portions or departments?—Was it that each or any ſhould have a communication with the others or any of them? Surely not: for then no ſeparation would have been made, and all the ſovereignty would have been left in one body, and thus an arbitrary power given to it. To prevent an arbitrary power the ſeparation was made, and the communication muſt lead to an arbitrary power; to proſtrate firſt one department, and then another, under the feet of the department acquiring a communication of the powers of any other. The idea of communication is inconſiſtent with the idea of ſeparation; ſeparation is neceſſary to prevent arbitrary power; communication tends to make the will of one department defeat that of all the others; and diſcretion in one, with communication with the others, is but another word for arbitrary power.

While the proper department was proceeding to its act, could any other have reſtrained the exertion of its conſtitutional powers? Can Congreſs make a law, that the ſupreme court ſhall not give judgment in an action depending therein? If any one department cannot prevent another to complete its act, after the act is complete, can it defeat it? All departments are the agents of the Conſtitution; and the Conſtitution, which authorizes the act, certainly requires its execution; and its intruſting the direction to one, and the execution to another agent, cannot be ſuppoſed to have been intended, that the powers be ſet againſt each other, and ſo nothing be done. Does not the prohibition to prevent the act, neceſſarily preſume a prohibition to defeat its execution? Can it be a conſtitutional act, and yet an act not to be executed? Can the check of the one on the other, without this preſumption, be effectual? Without this, will not the department intruſted with the act, poſſeſs merely a ſhadow without a ſubſtance, and be like thoſe philoſophers who ſuppoſe there is nothing in nature but ideas; and worſe than they, as wanting power even in imagination?

I may be told, that there is a department, which poſſeſſes power to defeat the act of another: for the Preſident may, by a pardon, defeat the judgment of a criminal court. This power is expreſsly given by the Conſtitution. In England, the court of chancery can defeat the judgment of a civil court. The court of chancery is part of the judiciary department. There and here the ſupreme executive can, by pardon, defeat the judgment of a criminal court. I conſider the power of pardon, in criminal caſes, as analogous to the chancery power in civil caſes; a power to mitigate the rigour of the law, and give relief, where law could not relieve. In this reſpect, I conſider the executive

tive as acting in a judicial capacity, and concluding the act of that department. And I consider his discretion as a judicial discretion, and like the court of chancery, bound by rules drawn from experience, in the exercise of this discretion. As this idea has not perhaps been sufficiently attended to, I will not undertake to lay down rules for the exercise of the discretionary power of pardoning. But something like this may be suggested: that this power ought not to be exerted, where, according to the rules of law, a jury could have acquitted, or a court have discharged; but it may be exerted, where greater mischief may accrue to the community from the execution, than from the pardon of the judgment. Such exercise of discretion will not interfere with the constitutional power of the ordinary judiciary; for it is bound by rules, and cannot regard consequences. *Fiat justitia ruat cælum.*

My idea of true discretion is this: where the Constitution, or where a constitutional act of any other department does not interfere, every department has a discretion to proceed or not to proceed, in a particular exertion of its authority. But where the Constitution, or a constitutional act of any department, requires an exertion of the authority of any other department, this other department as no discretion to proceed, or not to proceed, to the necessary exertion; has no authority to examine, whether the department whose act requires its exertion, has exercised its constitutional discretion right or not. Every act legally concluded by any department, must, by every other department, be considered as *rightly* concluded; and, like a mathematical maxim, be received without proof. And in this case, it is not one department that abridges the power of another; but as Mr. G. says, "it is the Constitution, which

which abridges the powers of both:"—The firſt cannot proceed—the other cannot look back.

Such are my ideas of the uncontrolled power of the departments, their mutual checks, and their ſeveral diſcretion. And I hope it will appear to every candid, intelligent and attentive reader, that this doctrine "will ſtand the teſt of inveſtigation, and leads to no palpable abſurdity;" and, ſo far from being "novel," will to every reader who has ſtudied the principles and modification of the Conſtitution of the United States, appear familiar and juſt; and as old as the Conſtitution itſelf.

I ſhall now proceed to examine the reaſoning of Mr. G. on theſe principles; and I hope I ſhall ſhew, that it is founded on a miſapplication of words, and a miſconſtruction of principles.

He founds his reaſoning on this poſition;—"The Conſtitution has expreſsly and excluſively veſted, in Congreſs, the power of raiſing, granting, and directing the application of money." For this he ſtates his authority in the Conſtitution. "The 8th ſection of the firſt article declares, that Congreſs ſhall have power to levy and collect taxes, duties, impoſts, and exciſes, and to borrow money on the credit of the United States. The 1ſt ſection emphatically ſtates, that *all legiſlative powers* herein granted ſhall be veſted in Congreſs; and the 9th ſection provides, that no money ſhall be drawn from the treaſury, but in conſequence of *appropriations made by law.*"

From his poſition ſo ſupported, he draws this concluſion, "that Congreſs are judges of the propriety or impropriety of making a grant, and have a right to exerciſe their diſcretion therein."

I would obſerve that his poſition is not ſtated in the words of the Conſtitution; and it is no uncommon thing,

by

by changing the words of the Conſtitution, into words conveying the ſame ſenſe, and ſomething more, to draw from them a concluſion which the words of the Conſtitution do not warrant. For inſtance, the 7th ſection of the 1ſt article of the Conſtitution ſays, that "All bills for raiſing a revenue ſhall originate in the Houſe of Repreſentatives." One would think in reaſoning on this ſection, there would be no harm in ſubſtituting the words *money bills*, inſtead of the words *bills for raiſing a revenue*. But beſides *bills for raiſing a revenue*, there are *appropriation bills*, which are bills fixing a ſum of money, and declaring an object to which it ſhall be applied, and a fund from which it ſhall be drawn. Theſe may alſo be called *money bills*. Now by ſubſtituting, in the 7th ſection, the words *money bills*, inſtead of the words *bills for raiſing a revenue*, the ſection, ſo read, will be conſidered as reſtraining the Senate from originating an *appropriation bill*;—though the Conſtitution reſtrains the Senate only from originating *bills for raiſing a revenue*. Yet an *appropriation law* may be made, without a *law for raiſing a revenue*, or without occaſioning any ſuch law.

I ſhall not diſpute, whether the words of his poſition, *raiſing, granting, and directing the application of money*, do not ſufficiently expreſs the powers of Congreſs, as ſtated in his quotations from the Conſtitution; but, in the courſe of theſe obſervations, I ſhall have occaſion to diſpute, whether Mr. G. does not uſe them, to expreſs thoſe powers, and ſomething more, which the words of the Conſtitution neither expreſs nor imply.

Not content with the words of the Conſtitution, "All legiſlative powers herein granted, ſhall be veſted in a Congreſs;" Mr. G. ſays, that this is "*emphatically*" ſtated. Perhaps he inſerted the word *emphatically*, thence to ſupport his

his doctrine, by a concluſion, that the Conſtitution gives no legiſlative power but to Congreſs, and excludes the department of foreign intercourſe from all legiſlative power.

The Conſtitution does not veſt all legiſlative power in Congreſs; for it declares that the Preſident ſhall have power, by and with the advice and conſent of the Senate, to make treaties, provided two-thirds of the Senators preſent concur*; and it declares, that this Conſtitution, and the laws of the United States which ſhall be made in purſuance thereof; and all treaties made, or which ſhall be made, under the authority of the United States, ſhall be the ſupreme law of the land; and the judges in every ſtate ſhall be bound thereby, any thing in the Conſtitution or laws of any ſtate to the contrary notwithſtanding‡.

It has been admitted that the Houſe of Repreſentatives claims no agency in making treaties; and even Mr. G. has admitted, that where a treaty needs no law to carry it into effect, or is not contradicted by any previous law, no interference of the Houſe of Repreſentatives is neceſſary; the Conſtitution declares a treaty to be a law of the United States; and the Houſe of Repreſentatives is an eſſential part of Congreſs; there is therefore other legiſlative powers granted by the Conſtitution, than thoſe veſted in Congreſs.

In laying down his poſition, having ſubſtituted words of his own, inſtead of the words of the Conſtitution, on which only his argument muſt reſt, he thus reaſons from it. "We ſay, that Congreſs, having the ſole power of granting money, are judges of the propriety or impropriety of making a grant, that they have a right to exerciſe their diſcretion therein, and that the power of granting

* *Art. 2. Sect. 2.* ‡ *Art. 6.*

money,

money, for any purpoſes whatever, belongs ſolely to the legiſlature, in which it is *literally* veſted by the Conſtitution. The power of determining the amount of an appropriation is a legiſlative power, the power of doing what is within the province of law, the power of fixing the rule by which a certain act is to be executed. The Preſident may appoint as many miniſters as he thinks fit, and if Congreſs, without having any right to exerciſe diſcretion, be bound to make proviſion for them, the amount of money neceſſary for their ſupport, would alſo depend upon him; and the power of granting money, in that inſtance, would be transferred from the legiſlature to the executive, and alſo the power of raiſing money; for it is immaterial to me, whether he does it directly, or whether the legiſlature are bound to do it, according to his diſcretion."

In order to determine, whether his reaſoning be fair, and his concluſion juſt, we muſt examine the juſtice of his poſition, by comparing it with the ſections of the Conſtitution, by which he ſupports it. He ſupports it by his quotations from the 8th, the 1ſt, and the 9th ſections, of the 1ſt article of the Conſtitution. Taking it for granted (and I believe it is true) that theſe quotations are the only parts of the Conſtitution, on which he could found his reaſoning to draw his concluſion; if his poſition, taking the words of it in the ſenſe which his reaſoning puts on them, be not ſupported by his quotations from the Conſtitution; his reaſoning, and his concluſion muſt fall to the ground.

Preſuming that he ſupports his power of raiſing money, by the 8th ſection; his power of granting, and directing the application of money, by the 9th; and the excluſive veſting of theſe powers in Congreſs, by the 1ſt; I ſhall take the liberty to ſubſtitute in his poſition, the words of the Conſtitution, inſtead of his words. The poſition and

concluſion will then ſtand thus :—*All legiſlative powers herein granted ſhall be veſted in a Congreſs ; Congreſs ſhall have power to lay and collect taxes, duties, impoſts, and exciſes, and to borrow money, on the credit of the United States ; and no money ſhall be drawn from the Treaſury, but in conſequence of appropriations made by law ; therefore,* ſays he, *Congreſs are judges of the propriety or impropriety of making a grant, and have a right to exerciſe their diſcretion therein.*— STRANGE LOGIC !

In his ſhort quotation from the 8th ſection, he has omitted ſome words, immediately after the power to lay and collect taxes, duties, impoſts, and exciſes, and before the power to borrow money. I ſhall reſtore them to their place. "Congreſs ſhall have power

"To lay and collect taxes, duties, impoſts, and exciſes, to pay the debts, and provide for the common defence, and general welfare of the United States :—

"To borrow money, on the credit of the United States."

From the manner in which this part (and the whole) of this ſection is printed, I conſider the word *to* before the words *pay the debts*, as ſynonymous with the words *in order to*, and the clauſes omitted by Mr. G. not as giving two new powers, but as pointing out the objects to which the money raiſed by taxes, &c. ſhall be applied. So that Congreſs takes this power of raiſing money, coupled with the duty of applying it to theſe purpoſes.

Let me obſerve alſo, that this ſection which defines the powers of Congreſs, gives to it a power "To make all laws, which ſhall be neceſſary and proper, for carrying into execution the foregoing powers, and all other powers, veſted, by this Conſtitution, in the government of the United States, or in any department or officer thereof." I ſay that Congreſs takes all its powers, coupled with the

duty

duty of applying them to the purpoſes, for which they were given by the Conſtitution.

That the Conſtitution determines, that Congreſs has the excluſive "power to lay and collect taxes, duties, impoſts, and exciſes, and to borrow money"; and that "no money ſhall be drawn from the Treaſury, but in conſequence of appropriations made by law," *and by a law made by Congreſs*; I admit. But before Mr. G. can draw a concluſion, that Congreſs may, in every caſe, determine, whether it be proper or improper, to lay taxes, or to appropriate money, he muſt eſtabliſh ſomething more: he muſt eſtabliſh, from the Conſtitution, that Congreſs has in every caſe, a power to refuſe to lay taxes, or to appropriate money. This he cannot eſtabliſh either from his quotations or any other part of the Conſtitution: for it may be the duty of Congreſs to lay taxes, in order to pay the debts, and provide for the common defence, and general welfare of the United States.

Taking his poſition in his own words, "the Conſtitution has expreſsly and excluſively veſted in Congreſs, the power of raiſing, granting, and directing the application of money;" before he can draw his concluſion, "that Congreſs are judges of the propriety or impropriety of making a grant, and have a right to exerciſe their diſcretion therein;" he muſt eſtabliſh ſomething more: he muſt eſtabliſh, that in *all* caſes, the man who has the ſole power of granting money has a power to refuſe. This he cannot eſtabliſh from any principles of reaſon; for a man may have the ſole power to do a thing coupled with an abſolute obligation to do it; as the Preſident to appoint judges of the ſupreme court; and the ſupreme court to give judgment in a caſe before it affecting an ambaſſador; or a man to pay his debt. Mr. G. therefore draws a conclu-

ſion without the neceſſary premiſes; and his concluſion has not foundation to reſt on, and muſt fall to the ground.

If, by laying emphaſis on the word *all*, he means to prove that *no* legiſlative power is veſted in any other department of government, except Congreſs, the ordinary legiſlature; I have ſhown, that this is inconſiſtent with a fair conſtruction of the Conſtitution. To found any reaſoning on one expreſſion of any inſtrument, when there are, in it, other expreſſions, which would deſtroy that reaſoning, is taking a contracted view, and making an unfair and imprudent uſe of that inſtrument. The whole muſt be taken together, and if there be any contradictory expreſſions, they muſt if poſſible be reconciled, by applying them ſeverally to the reſpective objects in the contemplation of its author.

If Mr. G. conſiders diſcretion, as ſynonymous with legiſlative power, and aſſerts, that in every caſe, in which an act of the legiſlature is called for, they have a diſcretion to act or to refuſe, according to their diſcretion; his reaſoning will ſtand thus:—The power of raiſing, granting, and directing the application of money, is a legiſlative power; but every legiſlative power is coupled with a diſcretion in the legiſlature, to exerciſe or refuſe its power; therefore the legiſlature may, in every caſe, refuſe to raiſe, grant, or direct the application of money. I have ſaid in *every* caſe, not only becauſe the diſcretion, which Mr. G. contends for, is co-extenſive with the power, which extends to *all* caſes; but becauſe there are ſome caſes, in which I admit the diſcretion to refuſe. And I have uſed the words *may refuſe to raiſe, grant*, &c. inſtead of his words, "Congreſs *are judges of the propriety or impropriety of the grant, and have a right to exerciſe their diſcretion therein*; becauſe I admit, and therefore we both agree that

that Congreſs has a right to refuſe in ſome caſes, and unleſs the diſpute is ſtated, as I have ſtated it, there would be no diſpute; and becauſe a right to exerciſe *diſcretion* to grant, without a power to refuſe, is *no* right: there can be no diſcretion, where there is no power to refuſe.

Mr. G. admits, that where the Conſtitution, as in the caſe of ſalaries to the Preſident, and the judges of the ſupreme court, declares, that Congreſs *ſhall* grant; Congreſs is bound not to refuſe. But he ſeems to hold this opinion, "that the diſcretionary power of the legiſlature, to grant money, is limited only by the Conſtitution, and is not transferred to any other department;" and ſtating that, "when the Conſtitution means to impoſe a duty, it poſitively directs the act to be done," he ſays "we may ſafely conclude, that where it gives no ſuch direction, where it empowers, inſtead of commanding, the reaſon is, that it meant to leave a diſcretion."

This concluſion he ſeems to ſupport, by diſtinguiſhing between the word *ſhall*, and the word *may*, and he ſeems to conſider this, as the diſtinction between legiſlative power, and executive power; conſidering legiſlative power as coupled with diſcretion, and executive power as coupled with obligation; and as the Conſtitution, in ſome caſes, poſitively directs, by the word *ſhall*, there is no obligation on the legiſlature but in thoſe; and that, in all other caſes where the Conſtitution uſes the word *may*, or the words *ſhall have power*, the legiſlature has diſcretion.

It is well eſtabliſhed and underſtood, that *may* is often conſtrued *ſhall*, and that *ſhall* is often conſtrued *may*. No man converſant in the legal conſtruction of language, will require proof of this.

The Conſtitution declares, that "the Preſident *ſhall* nominate, and, by and with the advice and conſent of the Senate,

Senate, *ſhall* appoint ambaſſadors, other public miniſters, and conſuls;" the Preſident has never appointed an *ambaſſador*; will Mr. G. recommend an impeachment for this breach of duty? Or, if the Preſident ſhould think proper to decline to appoint any public miniſter, would Mr. G. recommend an impeachment? "The Preſident *ſhall* receive ambaſſadors and other public miniſters:" if he have reaſon to reject, has he not diſcretion?" "The Preſident *may*, on extraordinary occaſions, convene both houſes, or either of them." Suppoſe an occaſion requiring him to convene either or both houſes, and he wilfully refuſe; is he not impeachable?

It appears then, that a poſitive duty may, without any expreſs command, be impoſed by the nature of the caſe. In many caſes, the word *may* impoſes as ſtrong an obligation as the word *ſhall*, and the word *ſhall* impoſes no ſtronger obligation than the word *may*. The Conſtitution of Pennſylvania declares, "that the legiſlature *ſhall*, as ſoon as conveniently may be, provide by law, for the eſtabliſhment of ſchools throughout the ſtate." Do the words, *as ſoon as conveniently may be*, weaken the obligation; or ſuppoſe them ſtruck out, would the obligation be ſtrengthened? Or, is the eſtabliſhment of ſchools better provided for, by the word *ſhall*, than if the Conſtitution had uſed the word *may*?

Mr. G. admitting, that where the Conſtitution declares, that Congreſs ſhall grant money, there is no diſcretion to refuſe; obſerves, that it "declares, that the Preſident and Judges ſhall have ſalaries, &c. Had the framers of the Conſtitution alſo intended, that Congreſs ſhould be bound to make proviſion for miniſters, they would have introduced a ſimilar clauſe in reſpect to them. The Conſtitution is explicit in one caſe, and declares, that ſalaries

ſhall

ſhall be given: it is ſilent in the other, and does not declare, that ſalaries ſhall be given." He concludes, therefore, that "the objection, that Congreſs cannot, in every caſe, exerciſe the diſcretionary power to grant money, cannot reach farther than the ſpecific caſe on which it is grounded."

I will obſerve, that the object of thoſe clauſes in the Conſtitution, is not ſo much to bind Congreſs to grant money, as to prevent them from altering their grant. Its object is, to make the executive and judiciary independent of the legiſlature, and to deprive Congreſs of a power of influencing thoſe departments to ſuccumbency to the will of the legiſlature, and thereby of acquiring all power, and becoming arbitrary. This is evident, from the difference of expreſſion in the two caſes. The compenſation of the Preſident "ſhall neither be increaſed nor diminiſhed, during the period for which he ſhall have been elected." The compenſation of the judges "ſhall not be diminiſhed during their continuance in office." The judges continuing in office during life, it is evident, that from the gradual ſinking of the value of money, which accompanies the increaſe of agriculture, manufactures, and commerce, there might, during his continuance in office, be a neceſſity to increaſe the ſalary of a Judge: therefore, it is only ſaid, that the ſalary of a Judge ſhall not be diminiſhed. But the duration of the Preſident's authority being only four years, the neceſſity is not ſo great, as to induce the Conſtitution, to ſubmit the Preſident to the influence of hope from the legiſlature. Therefore, his ſalary can neither be increaſed nor diminiſhed, during the period of his appointment. If Congreſs could diminiſh the ſalary of the other departments, or, as the Pennſylvania Aſſembly, in the year 1796, did, in the caſe of Judges, when there

was

was a neceſſity for an increaſe, limit the increaſe to a leſs time than their continuance in office; the Conſtitution would be violated, the other departments would be influenced to a ſuccumbency to the legiſlature, and a ſeparation of power, the guard againſt deſpotiſm, would be removed. The other departments would become the mere puppets of the legiſlature, and be reduced to that ſtate of dependency, in which the Engliſh judges were, before continuance for life was attached to their office: for it is the ſame thing whether you take away the office, or take away the ſalary, or make it incompetent.

It would have been extending but a little farther, the ſame principle of reaſoning, if Mr. G. had denied, that Congreſs is bound to grant money, even to the Preſident or Judges; for the Conſtitution does not expreſsly ſay, that Congreſs ſhall grant, but only that the Preſident and Judges ſhall receive: and the obligation to grant is only implied. Had it been expreſſed, Congreſs, without a ſenſe of duty, could eaſily have evaded the words, by making an incompetent grant, or eſtabliſhing it on incompetent funds. The duty of granting ariſes out of the power to grant, and the obligation to promote the views of the Conſtitution. The Conſtitution lays down only the out lines of the government, and leaves to the departments the power, with the obligation to finiſh the reſt.—The Conſtitution does not deſcend to little matters. The Conſtitution does not provide, that ſalaries ſhould be given to all the officers of the government. But ſurely, if there be an officer neceſſary for the regular operation of the Conſtitution, and that officer cannot be obtained without a ſalary, Congreſs are as much bound by the Conſtitution, to grant a ſalary, as if the Conſtitution expreſsly required it to be done.

Mr.

Mr. G. will perhaps allow this, but contend that Congreſs is to judge of the neceſſity, and that the power of acting is accompanied with the power of refuſing. "Congreſs is, upon all occaſions, under a moral obligation to act according to juſtice and propriety. We do not claim the abſurd privilege of acting without ſufficient motives, but we wiſh every proper motive to have its due weight. The opinion of the Executive, and where he has a partial power, the application of that power to a certain object, will ever operate as powerful motives upon our deliberations." Whether it be to embarraſs the argument, or to give it a ſpecious appearance, in the more harmleſs names of right of diſcretion, and giving every motive its due weight; he avoids expreſſing the power to refuſe; though that be the only power really to be contended for. That Congreſs alone has the power to grant, is clear. A power to judge, without a power to refuſe, is nothing. And to contend for ſuch power in the Houſe of Repreſentatives, with reſpect to tranſactions of the other departments, is to contend for an idle and uſeleſs curioſity into tranſactions, which they have no authority to conduct or control. To contend for that, and the power to refuſe, is to give the Houſe of Repreſentatives a compleat control over all the other branches, and veſt all power in the Houſe of Repreſentatives. For, as Congreſs only can grant money, if, where money is neceſſary to execute the meaſures of the other departments, the Houſe of Repreſentatives may judge of the propriety or impropriety of making a grant, and have a right to exerciſe their diſcretion therein; though they may grant, if they approve, they may refuſe, if they diſlike. If the acts of other departments are to be weighed as a motive, not reſpected as an obligation, there will never be wanting pretences for conſidering the motive as

light. They will never grant the money, unleſs they approve the meaſure. A right to judge of the propriety of the grant, is a right to judge of the propriety of the meaſure. And thus every department, to whom the Conſtitution has intruſted the management of power, muſt exerciſe it according to the will of the Houſe of Repreſentatives; that is, the Houſe of Repreſentatives will have all power: all the barriers of ſeparation will be removed, and the compleat ſovereignty lodged in one houſe.

I ſay the Houſe of Repreſentatives, becauſe though Mr. G. in making this claim for the Houſe of Repreſentatives, affects to claim nothing more for them than for the Senate; yet, in fact, this claim increaſes only the power of the Houſe of Repreſentatives, and adds nothing to the power of the Senate: for the Senate, as part of the department of foreign intercourſe, has already all control over theſe meaſures, which the eſtabliſhment of this claim could give.

The doctrine which I would eſtabliſh, is, that all powers of Congreſs are coupled with an obligation to exerciſe them; that having a power to make all laws neceſſary and proper for carrying into execution the powers of Congreſs, and all powers veſted by the Conſtitution in the government of the United States, or in any department or officer thereof; Congreſs is *bound* to make all ſuch laws; that in all other caſes, Congreſs are judges of the neceſſity or propriety of ſuch law, and are bound to make it, only when they judge it neceſſary or proper; but that, where a law is neceſſary or proper, to carry into execution a conſtitutional act of any other department, this other department is the ſole judge of the neceſſity and propriety of paſſing ſuch law; and that, when this department declares the neceſſity or propriety of paſſing ſuch law, Congreſs is *bound* to paſs it, and has no diſcretion, but in chooſing the

beſt

beſt law, to give effect to the act of the other department. That, where the Conſtitution expreſsly requires a law, Congreſs has a diſcretion to refuſe, Mr. G. will not aſſert. Every one knows, that an implied obligation impoſes a duty as ſtrong as an expreſs obligation; and, that, to obſtruct the authority derived from the Conſtitution, is, in effect, to obſtruct the Conſtitution itſelf; for the Conſtitution was made, for the purpoſe that its ſeveral authorities ſhould be adminiſtered by the departments, to which they were ſeverally intruſted; and be carried into execution by the ſeveral departments, to which the means were intruſted. If the Houſe of Repreſentatives, therefore, refuſe to paſs a law, which the conſtitutional act of any department has rendered neceſſary; the Conſtitution is as effectually violated, as if they had refuſed to paſs a law, which the Conſtitution itſelf declared to be neceſſary.

Surely a claim which would defeat all the views of the Conſtitution, in eſtabliſhing a ſeparation of power, a claim, ſo abſurd as to counteract the Conſtitution, muſt have very expreſs words indeed to ſupport it. Mr. G. is ſenſible of this, and, without proving, aſſerts, "that it is evident that *where* the Conſtitution has lodged the power, *there* exiſts the right of acting and the right of diſcretion." But, to ſupport his aſſertion, he cannot appeal to any expreſs words of the Conſtitution. There are none ſuch. He muſt reſt upon general principles of conſtruction. But I have already obſerved that general principles will not ſupport his doctrine; for there may be power coupled with obligation, or power without any diſcretion.

It is not neceſſary for me, to diminiſh the force of the clauſe reſpecting appropriations, by conſidering it as a matter of form. It is ſubſtantial, that no money ſhall be

drawn from the treaſury but in conſequence of a law. But this does not eſtabliſh, that Congreſs is free to refuſe to paſs a law for that purpoſe; or has, in all caſes, a right to enquire into the propriety of the meaſures, which have occaſioned the neceſſity for raiſing money. The limitation, to two years, of appropriations for raiſing armies, is not impoſed as a reſtraint of Congreſs over the Executive, but as a reſtraint of one Congreſs over another. It may be obſerved, from this clauſe, that the power of appropriating money gives a control over the ſubject; and, if this power be coupled with diſcretion in all caſes, gives a control in all caſes. If there be no limitation to the exerciſe of this diſcretion, but the judgment of the Houſe of Repreſentatives, as there is no power to control their judgment, they only will judge of the weight of their motives, and will always think they judge right; and there will be no limitation to the power of the Houſe of Repreſentatives. Thus all ſeparation of power will be removed, and arbitrary power will be veſted in one branch of the legiſlature.

Who gave the Houſe of Repreſentatives a right to ſet itſelf up as the ſole organ of ſovereignty, as the ſole judge of propriety; over its compeers in authority, "erecting itſelf into a high prieſt of the Conſtitution, aſſuming the keys of political ſalvation, and damning, without mercy, whoſoever differs with it in opinion?" Is *it* any thing more than a fellow-ſervant with the other departments, like them, by the Conſtitution, the lord of all, limited to its own portion of authority, and, by the Conſtitution, bound to lend its aſſiſtance to them, whenever their conſtitutional authority calls for it; as much as each of them is bound towards it? Whenever a law is made, the judiciary is bound to carry into execution the view of the legiſlature; by lending their power to determine on it.—

They

They have no diſcretion whether they will do ſo or not, for the Conſtitution, by giving them the ſole power of determining, poſitively binds them to determine, and the only diſcretion left with them is the chooſing of the beſt manner of determining, ſo as beſt to accompliſh the views of the legiſlature. When the judiciary have given judgment, the executive has no diſcretion, whether it will lend its power to execute the judgment; for the Conſtitution, by giving it the ſole power of executing judgments, has poſitively bound it to exert its power, for this purpoſe; and the only diſcretion left is the choice of the moſt convenient and lawful means for the execution. Whenever Congreſs eſtabliſhes an office, the Conſtitution, by giving the Preſident the power of appointing, binds him to appoint a competent officer, and he has no diſcretion but to judge of the moſt proper perſon. Whenever an act of any of the other departments requires a grant of money, in order to give it effect, the Conſtitution, by giving Congreſs the ſole power of granting money, has poſitively bound it to grant a ſum competent for the due execution of the act of the other department; and the only diſcretion left to it is a choice of the beſt means of raiſing the money, or the beſt fund whence to draw it. Suppoſe a judgment againſt the United States in any of its courts for a ſum of money; is not Congreſs bound by the duty ariſing out of their power, to provide funds for the payment of this judgment; or can it enter on the judiciary province, and enquire into the merits of the judgment? Juſt ſo, in any act of any other department creating, on the ſubject committed to it, a neceſſity for a grant of money, there ariſes, out of their power, a duty on Congreſs to make a competent grant. The competence of the grant is to be meaſured by the nature of the act, the execution of which is to be provided for;

for; and the means of raiſing the money are to be directed by the diſcretion of Congreſs; for the direction of the means of raiſing money is excluſively veſted in Congreſs. Whenever an act of another department interferes not, Congreſs may grant or refuſe, according to its diſcretion, reſtrained only by the Conſtitution: for the Conſtitution veſts in Congreſs the reſidue of all powers of adminiſtration, not diſtributed to other departments; ſubject, like every department, to the duty of exerting its powers for promoting the views of the Conſtitution, and giving effect to the meaſures of the other departments. Every department, whoſe power is wanted in the execution of a meaſure, may judge of the authority of another, but not of its diſcretion; of its having acted within its conſtitutional limits, but not of its having *well* acted. The diſcretion, the power of determing the propriety or impropriety of any conſtitutional meaſure, is excluſively committed, by the Conſtitution, to the proper department. When it has determined, all other departments are bound by it. It is the Conſtitution which binds them all.

The judiciary may judge of the conſtitutionality of a law; but not of its propriety: the legiſlature alone can determine this—The executive may judge of the conſtitutionality of a judgment, of the juriſdiction of the court over the ſubject, but not of the merits of the judgment. So, reſpecting any act or meaſure of the department of foreign intercourſe, the Conſtitution gives Congreſs no power to judge of the propriety of the meaſure; if it cannot judge of the propriety of the meaſure, it cannot judge of the propriety of the grant, any farther than under a ſenſe of duty, to fix the amount, and chooſe the means of raiſing it. Even Mr. G. admits that Congreſs has no right to diveſt the Preſident of any of his conſtitutional powers.

powers. And he conſiders the limitation of appropriations for an army, by any one Congreſs, to a term equal to its own duration, as ſufficiently diveſting any one Congreſs of a power of raiſing an army, ſo as not to be under the control of another Congreſs. The power of withholding appropriations, for the acts of any department, is, on this principle, a power of reſtraining from acting, and of diveſting this department of its conſtitutional power. The Preſident has power to make treaties, and to appoint and receive ambaſſadors. To deprive him of the means of ſending public miniſters, is depriving him of the power of making treaties. On his own principles, Mr. G. muſt admit, that this power is coupled with a diſcretion of judging with what nation, or in what manner, to form a treaty, or carry on an intercourſe by means of ambaſſadors. Yet he avows it to be the object and effect of this claim of the Houſe of Repreſentatives, though not to annihilate the eſtabliſhment, "effectually to check its extenſion." The Houſe of Repreſentatives then ſay, "Though the Conſtitution has veſted the Preſident with a diſcretion, we will not permit him to execute it; but will diveſt him of his conſtitutional power. It is true, we do not now, annihilate the eſtabliſhment, we chooſe only to retrench it; but when we have ſucceeded in this, the ſame arguments will enable us to annihilate. Surely, if we may now tell the Preſident, he ſhall ſend but three plenipotentiaries, we may, next year, tell him, he ſhall ſend but one; and the year following, none: and we will manage the foreign intercourſe ourſelves as well as the powers of internal legiſlation. Whoever has the ſole and excluſive command of the purſe, is the ſole maſter; and if we can caſt off the conſtitutional limitations of our power, we ſhall be ſole maſters. Are not we the Repreſentatives of the People?"

I conſider

I conſider the People as the proprietor of a great eſtate, the different departments as his agents for the management of it; and the Conſtitution as the inſtructions given them for their conduct, and the limitations of their authority.—He gives no predominancy of one over another; nor the whole of his own power to any; but a part of it to each. To one he gives power to manage his buildings, gardens and fields; to another of managing his lawſuits, his diſputes about his boundaries, or any claims of neighbouring proprietors of rights on his eſtate; and to another he gives the power of collecting his rents and debts, and paying out his money. Now, if this money agent, becauſe he has power to raiſe and pay money, has a right in all caſes, before he grant, to enquire into the propriety or impropriety of the grant; it is clear that he has the ſole management of the eſtate, and that nothing can be done reſpecting the buildings, gardens, fields, boundaries, or diſputes of the proprietor, without the approbation of the money agent; and that he will have all the power of the proprietor, and be ſole agent. The proprietor never meant this. He meant only, that this money agent ſhould take care, that his building agent ſhould not draw money, for conducting lawſuits; nor his law agent, for conducting the buildings, gardens or farms; but never meant, that when either of the other agents wanted money for the purpoſe of his agency, the money agent ſhould have power to refuſe; or, before he granted, enquire whether the other agent had conducted his own buſineſs right. Every agent, for the purpoſes of his own department, is to every other, as the proprietor; and for thoſe purpoſes, has the ſame right as the proprietor, to call on the money agent for money; and a refuſal of the money agent, to furniſh any other agent with the neceſſary money to accompliſh his purpoſes,

poſes, is a refuſal to obey the inſtructions of the proprietor, and amounts to a refuſal to furniſh the proprietor himſelf with money: for this other agent has, for his purpoſes, all the authority of the proprietor. The Conſtitution is the will or inſtructions of the proprietor; the departments are the agents; Congreſs is the money agent. Every conſtitutional act of any of the departments, being a regular exertion of the authority of the Conſtitution, has the ſame authority over the other departments, as the Conſtitution itſelf; and if it limit the power of the others, it is not this department, but the Conſtitution which limits the power of the others. An authorized act of the agent is an act of the principal. Therefore, if the conſtitutional act of any department require money to give it effect, Congreſs is as much bound to grant it, as if the Conſtitution itſelf required the grant. Every act concluded under the authority of the Conſtitution, is as binding as the Conſtitution; and if an act of the legiſlature, of the judiciary, or of the department of foreign intercourſe, requires a grant of money, the Houſe of Repreſentatives are as much bound to raiſe and grant it, as if the Conſtitution required it. They can no more examine the propriety of the act, than the propriety of the Conſtitution. They are but fellow agents with the department to whoſe diſcretion their common lord, the Conſtitution, has excluſively intruſted the judgment of the propriety or impropriety of the act, and have no power paramount over this department to judge of its diſcretion. If the other department has, according to its authority from the Conſtitution, regularly concluded an act, the Houſe of Repreſentatives has no diſcretion, whether or not, to give it effect. What then is the diſcretion of the Houſe of Repreſentatives? A diſcretion to enquire, whether the act be within the juriſdiction of the other de-

partment, and how beſt to give it effect; a diſcretion, under a ſenſe of duty, to determine the ſum neceſſary to give it effect, and to deviſe the beſt ways and means to raiſe that ſum. Each department has diſcretion, within its own juriſdiction, of exerciſing its powers, as it pleaſes, agreeably to the Conſtitution; or, if the Conſtitution, or any other department, do not require it, under a ſenſe of duty, to decline the exerciſe of its powers; but no department can, in the exerciſe of its own powers, defeat the conſtitutional authority of another. An act of the department of foreign intercourſe may be conſidered as a law or a contract, and as there is no power in the Houſe of Repreſentatives to annul, they muſt execute it, like any other law or contract.

To ſhew, that this doctrine will not ſtand the teſt of inveſtigation, Mr. G. ſays, "Whenever the powers veſted in any one department are ſufficient to complete a certain act, it would be unconſtitutional in any of the others, to control it. But whenever the powers have been ſo diſtributed between two departments, in relation to another certain act, that neither of the two can complete the act, by its own power; each department is controlled by the other." This reaſoning ſeems to be founded on a miſapplication of words; by not diſtinguiſhing between a right of determining on a meaſure, and the power of directing the means of giving it effect; calling the firſt an act, and the other a complete act. The firſt is ſurely, ſo far as the word *act* can be applied to it, a complete act; and the refuſal of the means of giving it effect, is not a refuſal to complete, but a power to defeat or render uſeleſs; and the department which has completed the act, though it may not have the power itſelf to apply the means, may have a right to require the department, which has the means of giving

giving it effect, to apply those means for that purpose, and not, by denying the means, defeat the act. A judgment of a court is a compleat act; but the court has not the means of executing it; those are intrusted to the proper officers, the sheriff, &c. But though the court itself cannot exert those means; it has a right to require the officer to exert them, and it would be unconstitutional in him to refuse. Suppose a bill should pass both Houses of Congress, be approved by the President, and become a law; it is a compleat act, yet it cannot be carried into execution without the aid of the executive and the judiciary. They only have the constitutional power of executing it: have they also a constitutional discretion to refuse? Suppose, in the adjournment of the House of Representatives, the President perceives an emergency requiring a new minister to be instantly dispatched, without waiting for appropriations. The minister is dispatched, and executes the commission. Has the House of Representatives a discretion to refuse a compensation?

The absurdity which Mr. G. sees, in the doctrine for which I contend, is an absurdity of his own making, and arises from begging the question, and supposing, that the department, which has the means of executing the compleat act of another department, has a right to refuse those means. I say it has no such right; and it is only he who says it has, who occasions the absurdity.

The novelty of this doctrine is no better proved than its absurdity. I have shown how consistent it is with the Constitution. If tradition has made void the law, if political Scribes and Pharisees have introduced their glosses instead of the text; no wonder if, when the true gospel shines out, it should be received by those blind guides as novelty. To compare it to the state constitutions, furnishes no evidence, for either there will be no resemblance,

or the ſame diſpute will exiſt. To compare it with the government of Britain, gives no evidence; ſince it is not principles of a Conſtitution, but principles of corruption, which preſerve the form of that government, and ſupport the authority of the King againſt the authority of the Houſe of Commons. Aided by corruption, the King, who has the power of making treaties, may ſafely truſt to Parliament the diſcretion of executing them; if as Mr. G. ſays, "a progreſſive patronage and a ſyſtematic corruptinginfluence have ſunk Parliament to a nominal repreſentation, a mere machine, the convenience uſed by government for the purpoſe of raiſing ſupplies; the medium through which the executive reach with eaſe the purſe of the people. And now when the farce of obtaining even the nominal conſent of Parliament is ſufficiently underſtood, the miniſtry diſpenſe with the ceremony." The uſe of corruption proves, that, without it, the King could not preſerve his prerogatives againſt the incroachments of the Houſe of Commons. But, armed with this corruption, the King has as little to fear from the diſcretion of the Parliament, as Robeſpierre or the French Directory, armed with terror, could have to fear from the legiſlative Councils. But ſurely either the one or the other model is unfit for our imitation. We want neither an Anglo-monarchico-ariſtocratic faction, nor a Gallo-demo-mobocratic faction, to deſtroy the ſtructure of the American Conſtitution. Nor ought we to derive its conſtruction, from the errors and corruptions of other governments, but from its own principles and organization.

The great fallacy in the reaſoning of Mr. G. ariſes by ſubſtituting the words *raiſing and granting* money, inſtead of the words of the Conſtitution; and confounding the power of raiſing and granting money, with a power of creating

ing a neceſſity for raiſing and granting, and determining the reality and extent of that neceſſity, and making the words *raiſing and granting*, mean creating a neceſſity or determining the reality and extent of a neceſſity for granting. Theſe are powers eſſentially different from the powers of raiſing and granting. They are not, and conſiſtently with the views of the Conſtitution, they could not be, veſted in Congreſs. To ſay, that they are implied in the powers of raiſing and granting, is reaſoning without premiſes, and therefore inconcluſively. They are not implied; and often exiſt ſeparate from each other. To ſay that they are given to Congreſs, is taking a very narrow and imperfect view of the Conſtitution.

They are alſo given in many inſtances to other departments. It cannot be inferred, from the power of laying taxes, and appropriating money, that this power is always free from an obligation to exert it; or that this obligation cannot be impoſed, but by the diſcretion of Congreſs. To judge of the propriety or impropriety of a grant for any object, in any other ſenſe, than as to judge of the proper amount of the grant, and the proper means of procuring and applying the money, is to judge of the propriety or impropriety of the object; and the management of this may, in many caſes, be committed to another department, with diſcretion excluſive and equal, as derived from the ſame ſource, the Conſtitution. A man is only free to judge of the propriety or impropriety of the grant, in the ſenſe contended for, when he has an arbitrary power over the money. For, if he have it in truſt from the owner, to apply it, as not only he, but his fellow agents may determine; he may often have no diſcretion to refuſe. Congreſs is but a fellow agent with the other departments, and like every other organ of power, takes all its powers coupled with

with duties; its power to make, therefore, coupled with a duty to make all laws neceſſary and proper for carrying into execution the powers of the Conſtitution, and all other powers veſted in the government, or in any department or officer thereof. The diſcretion of Congreſs to judge of the neceſſity or propriety of any law, is bounded by the diſcretion of every other department, in the execution of their conſtitutional authority. Where either the Conſtitution itſelf dictates the neceſſity or propriety of a law, or gives to any other department, or officer, the diſcretion to judge of the neceſſity or propriety of a law, Congreſs has no diſcretion left to judge of the neceſſity or propriety of making the law, but only of chooſing the beſt law to accompliſh the object of the other department. Its power is abridged by the Conſtitution. A claim of Congreſs then, to a diſcretion to judge of the propriety of a law which the Conſtitution, or any department with authority derived from the Conſtitution, may have declared to be neceſſary, is a claim of all power in the government, or a power to refuſe what the Conſtitution, or the conſtituted authorities, may have declared neceſſary. When nature may create a neceſſity, or the Conſtitution or any department may make an engagement or legal declaration; a claim in Congreſs, to a right to judge of the propriety or impropriety of the grant, is not, and conſiſtently with the views of the Conſtitution, cannot be veſted in Congreſs, for it is a claim to aſſume univerſal power, or a claim to aſſume a power over the principles of the Conſtitution, a power over the principles of nature and morals, and therefore a power over God himſelf.

I have now examined the reaſoning of Mr. G. on the conſtitutional principle; and as we know, that motives as pure as his, are no ſecurity againſt danger, I think it will

will appear, that judgment, as clear as his, is no ſecurity againſt error.—The fact is, that it is not from a want of obligation on the Houſe of Repreſentatives to appropriate money, but from a want of power to compel compliance, if they chooſe to diſregard this obligation. Impunity is often confounded with diſcretion, Suppoſe the judiciary refuſe to decide on a law; how can they be compelled? They may be impeached and removed. But ſuppoſe the ſame obſtinacy ſhould exiſt in their ſucceſſors; the government would be diſſolved: for no other department can exerciſe their authority. If an inferior court refuſe the exerciſe of its powers, a ſuperior court may compel it, by *mandamus*. No *mandamus* can go to the Houſe of Repreſentatives. We have no Pariſian mob to ſurround their hall with pikes and cannon. They cannot be impeached; for they have the ſole power of impeaching.—And the only compulſive force on them, is the removing power of the people, the elective branch. This is the tribunal before which they are tried; but, as ſaving money is generally popular, and the people is often ill informed, the Repreſentatives take means to eſcape from judgment, by prejudicing the judges, by inceſſantly and widely ſpreading among them miſrepreſentations of all the meaſures, which they oppoſe, and of all the acts of the adminiſtration. Though there be therefore a poſitive obligation, there being no compulſive power to enforce it, impunity is conſtrued as diſcretion; and the "moral obligation" of a ſenſe of duty, can alone enforce the exertion of "the conſtitutional power." And this it ſeems is "a metaphyſical ſubtlety!"

Of all public officers, we have the leaſt hold, by means of a ſenſe of duty, on repreſentatives accountable to none but to the people: eſpecially in granting money not to be expended

expended by themſelves. The confederation directed that all charges of war, and all other expences that ſhall be incurred for the common defence or general welfare, and allowed by Congreſs, ſhall be defrayed out of a common treaſury, which ſhall be ſupplied by the ſeveral ſtates; and alſo directed that every ſtate ſhall abide by the determination of Congreſs on all queſtions ſubmitted to them; and ſhall inviolably obſerve the articles of Confederation*.—Here was poſitive and moral duty united. Yet, when danger ceaſed, were both poſitive and moral duty ſufficient to perſuade the ſtate legiſlatures to comply with the requiſitions of Congreſs?

Preſuming the cordial concurrence of each department, to carry into effect the conſtitutional acts of any other; as Solon made no law againſt parricide, apprehending it impoſſible, that any one ſhould be guilty of ſo unnatural a barbarity, the Conſtitution forbears to command any department to abſtain from a reſiſtance to the authority of any other, which would deſtroy their common parent.

To the policy of extending or abridging foreign intercourſe, I ſay nothing. Reſting on the conſtitutional principle, it is ſufficient for me, that the Conſtitution has excluded the Houſe of Repreſentatives from all management of foreign intercourſe; and thought it ſafe, to truſt the whole diſcretion of managing it, to the Preſident, acting under the check of the Senate. The Conſtitution has conſidered the Preſident, as a ſafe depoſitary of this authority, and the Senate as a ſufficient check; and to the acts of this authority, as to the authority of the Conſtitution, it behoves the Houſe of Repreſentatives to bow: as it behoves the Preſident, in his turn, to bow to the authority of Congreſs as expreſſed by law.

* *Art.* 8. 1

Every

Every act done under the authority of the Conſtitution is, till it be annulled by the department which gave it exiſtence, as binding on every department, as the Conſtitution itſelf: thus not only the Conſtitution, but the laws and treaties of the United States are declared the ſupreme law. And the queſtion is not, whether any department may, in the exerciſe of its own authority, exerciſe diſcretion; but whether it may alſo exerciſe diſcretion over the authority of another department: whether the Houſe of Repreſentatives be free to do as it pleaſes, and, uncontrolled by the conſtitutional acts of any other department, ſet itſelf up as paramount over all, and abſorb, in itſelf, the authority of all the departments. It is a queſtion of pride, of ambition in the Houſe of Repreſentatives, to poſſeſs a power to prevent any thing being done, by any other department, without their approbation; that is, to acquire arbitrary power. And this they juſtify, under a pretence of preventing extravagance and abuſe of authority.

It is poſſible to ſuppoſe caſes, of a nature ſo extraordinary, as to juſtify one department, in aſſuming a power not given it, to defeat the acts of another. Perſonal liberty is a conſtitutional right; but if a man uſe it dangerouſly, it may be abridged. An emergency ſo critical may exiſt, that, to encounter it, a violation of the Conſtitution itſelf may become a duty. No argument can be drawn from this: for abuſe of power is a ſuppoſition which may be made in all departments, and is ſurely not leſs preſumable, in the Houſe of Repreſentatives, than in the Preſident and the Senate. So far as the Conſtitution intends, that the Houſe of Repreſentatives ſhould have this power to prevent extravagance, it is not diſputed with them. They have the diſcretion, controlled only by a ſenſe of duty, to adjuſt the amount of the grant to the nature of the object,

and to chooſe the means of raiſing and applying the money. To give them more, would be giving them all power: and if this be neceſſary, to preſerve us from abuſe in other departments; who, if they obtain this, ſhall preſerve us from abuſe in them? What ſecurity have we, that the Houſe of Repreſentatives may not act as extravagantly as the Preſident and Senate? Are large popular bodies leſs liable to extravagance, paſſion, partiality, and ambition, than an individual, or a ſmall ſelect body, reſponſible for their conduct? Have they not their favourites? Have they not their maſters? Give them the power claimed, would the other departments have any chance of preſerving the ſhadowy fragment of remaining authority? Would not the Houſe of Repreſentatives ſoon render odious the other departments, and render it impoſſible for the people to know the truth? The Houſe of Repreſentatives would be erected into a national convention, the centre of all authority; its opinions, its agents, its influence would ſpread ramifications of its power, and receive nouriſhment, in every part of the nation; and all its power would centre in a Mirabeau or a Robeſpierre.

How tyranny or ruin may have come on other nations, unleſs in ſo far as their circumſtances reſemble ours, it is not material to enquire. Our Executive has not, and cannot have, an uncontrolled command of the purſe of the people. Nor is there any kind of reſemblance between the power of appointing miniſters, and the caſe of ſhip-money. That caſe was a claim of exerciſing, not only the power which the King had, but the power which he had not; a power of laying and collecting taxes, as well as declaring their neceſſity, a power to fix the ſum neceſſary, as well as to declare the object. And whatever deductions may be made from hiſtory, it will be found, that tyranny has

has arisen from the turbulence and refractory conduct of the people, or the other departments; from an abuse of liberty or discretion; from contentions for power, creating a pretence, and from the circumstances of the Executive furnishing the means, of acquiring a predominancy; and from the satisfaction arising, when *any* government has superseded the anxiety of distractions, justifying the success, and favouring the establishment, of this predominancy.

"The events of the reign of Charles the first" are indeed "a proof of the danger to be apprehended from the incroachments of the legislature. They were the result of an unsettled Constitution. The precise boundaries of power were not ascertained: Convulsions, a civil war, a revolution ensued." Very natural consequences, from a case exactly like the present! Where is the difference between an unsettled constitution, and a constitution, the construction of which, by those who administer it, is unsettled? If the precise boundaries of power be ascertained, what is the ground of dispute between the department of foreign intercourse, and the House of Representatives? The cases are the same, let us take warning by the consequences.

In the contrast, which Mr. G. draws, between the President's speech to Congress, and the late President's address to the people; he cites the following sentence of the President's speech. "However we may consider ourselves, the maritime and commercial powers of the world will consider the United States of America, as forming a *weight in that balance of power in Europe, which never can be forgotten or neglected.*" Mr. G. recites the last clause of this sentence thus, "*As to that balance of power in Europe which never can be forgotten or neglected,*" leaving out

the word "*weight*," the eſſential word in the Preſident's ſentence, and the only word expreſſing the idea which, he ſays, was never to be forgotten or neglected. The Preſident's meaning plainly is that the maritime and commercial powers of the world will never forget or neglect the *weight*, which the United States of America form, in the balance of power in Europe. Mr. G. ſeems to cite this, as if the Preſident thought, that the United States ought never to forget or neglect the balance of power in Europe, but "involve itſelf in the deſtinies and wars of Europe."

I ſhould not have made this obſervation, had it been altogether unconnected with the principles and conſequences of the point in diſpute. But as the members who oppoſe this conſtitutional principle, in order to juſtify their oppoſition, and render the principle odious, loudly and widely clamour, that there is a *war party* in the adminiſtration, and that the *Preſident* is at the head of this *war party*; and as the quotation of Mr. G. might convey the ſame idea; thinking this idea falſe, I made this obſervation. But not intending to digreſs from the CONSTITUTIONAL PRINCIPLE; "*here let us ſtop.*"

FINIS.